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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-853

JOHN W. WALTON, JR., and RACHEL WALTON,
Petitioners,

vs.

LOUIS J. PAPAGIANOPOULOS,
COUNTY OF SACRAMENTO and STATE CONTROLLER
OF THE STATE OF CALIFORNIA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
to the Court of Appeal of the State of California,
Third Appellate District

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Third Appellate District

The Petitioners, John W. Walton, Jr., and Rachel Walton, respectfully pray that a Writ of Certiorari issue to review the opinion and judgment of the Court of Appeal, Third Appellate District, of the State of California rendered in these proceedings on June 14, 1977, affirming the judgment of the Superior Court of Sacramento County which granted the Respondents, Louis J. Papagianopoulos and the County of Sacramento, their respective motions for Summary Judgment and Dismissal of the Petitioners'

Cross-Complaint; and to consider the denial of the Petitioners' Request for a Hearing before the Supreme Court of the State of California.

SUMMARY

This is an extreme and unique case in which the Respondent Papagianopoulos would be unjustly enriched and a grave miscarriage of justice will be perpetrated based upon a denial of the Petitioners' constitutional rights if a Writ of Certiorari is not granted. The Petitioners have been wrongfully deprived of all their land without due process of law while they relied upon the representation made in 1966 by the Sacramento County Tax Collector that their land would not be sold for taxes until the State of California had settled with Petitioners for a portion of their land. The Petitioners have not been treated fairly in that the State of California and the County of Sacramento froze any sale or development of Petitioners' land from 1961 until the present while escalating the taxes from $135 to approximately $5,000 per annum. The land was sold purportedly at a tax sale in 1973 for a fraction of its value and for less than half the taxes against it. No notice of said tax sale was ever sent to Petitioner Rachel Walton because Sacramento County does not send such notices to married women contrary to state law. Due to the concerted actions of the State of California and the County of Sacramento, and possibly Louis Papagianopoulos, the Petitioners will be deprived of their

land without their day in court or their right to discovery, and the taxpayers of Sacramento will have lost thousands of dollars by allowing the Summary Judgment to stand. To uphold such judgments would encourage governments everywhere to not treat citizens fairly, and to deprive persons of their property without due process of law and deny certain groups, in this case, married women, equal protection under the law.

OPINIONS BELOW

The Opinion of the Court of Appeal, Third Appellate District, an unpublished opinion, appears at Appendix A, infra, pp. i to xiii. The opinions of the Superior Court of the State of California in and for the County of Sacramento, are unreported, and appear at Appendix B, infra, pp. xv to xxii. The Supreme Court of the State of California denied a hearing on September 15, 1977, thus, affirming the decision of the Appellate and Superior Courts without opinion. A copy of their order appears at Appendix C, infra, pp. xxiii.

JURISDICTION

The judgment of the Superior Court of the State of California in and for the County of Sacramento granting Louis J. Papagianopoulos his motion for summary judgment on his First, Third and Fifth Causes of Action for unlawful detainer, preliminary

injunction to remove continuing trespass and declaratory relief, and dismissing the Cross-Complaint to Quiet Title and to Remove Clouds on Title, was entered on December 4, 1974 (Appendix B hereto attached, infra, pp. xviii to xx); and the judgment of the same court granting the County of Sacramento as cross-defendant, its motion for summary judgment and dismissing the cross-complaint of Petitioners, John W. Walton, Jr., and Rachel Walton, with prejudice, was entered on December 13, 1974 (Appendix B hereto attached, infra, pp. xxi to xxii). The opinion of the Court of Appeal of the State of California, Third Appellate District, affirming the trial court's summary judgments in favor of Louis J. Papagianopoulos and the County of Sacramento was filed on June 14, 1977. A timely Petition for Rehearing was denied on July 14, 1977 (Appendix A hereto attached, infra, p. xiv). Petitioners were denied their Petition for Hearing by the Supreme Court of the State of California, on September 15, 1977. See Appendix C, p. xxiii, infra. This Petition for Certiorari was filed less than 90 days from the date aforesaid. The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3).

QUESTIONS PRESENTED

The questions presented to this Court for a judicial response stem from a course of action by the State of California and the County of Sacramento regarding real property purchased by the Petitioners in 1958, and where they resided until November 15,

1977. Said property was purportedly sold at a tax sale October 31, 1973, contrary to representations of County officials. Summary judgments were entered against the Petitioners which deprived them of Discovery due to Papagianopoulos' years in Greece and deprived them of their day in court. The questions thus presented are:

1. Was the manner in which notice was given to the Petitioners of the pending delinquent tax sale sufficient to satisfy the fundamental requirements of due process as guaranteed by the Fourteenth Amendment of the United States Constitution when considered in light of the representations made by the Sacramento County Tax Collector and relied on by the Petitioners, and all the other extraordinary circumstances?
2. Was Sacramento County's policy and procedure of failing to notify a particular class of listed assessees—namely married women—violative of the equal protection clause of the Fourteenth Amendment of the United States Constitution?
3. Do the questions of equitable estoppel and the controverted allegations of fraud present triable issues of fact from which an order granting summary judgment would be improper?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the California Revenue and Taxation Code Section 3701, which provides in pertinent part as follows:

> "After receiving the written authorization of the Controller and not less than 21 nor more than 28 days, before the proposed sale, the tax collector shall send a notice by registered mail of the intended sale to the assessee of each portion of the property at his last known address. . . ."

The first section of the Fourteenth Amendment to the Constitution of the United States is also involved, which provides as follows:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Preliminary facts:

Petitioners, John W. and Rachel S. Walton purchased certain real property located in Sacramento County, California in February 1958 as joint tenants. Both parties were listed as the assessees of such property by the County Tax Collector of Sacramento.

Subsequent to their purchase, the California State Legislature approved plans for the construction of State Highway 143 which was to pass through a portion of the Waltons' undeveloped property. The State then commenced negotiations to acquire the needed parcel and these talks continued until October 18, 1972 when the State filed an action in eminent domain, *The People of the State of California v. John W. Walton, Jr., Rachel S. Walton,* No. 227519, Sacramento County Superior Court. During this same general time period the County of Sacramento attempted to purchase the remainder of the Waltons' property for the future construction of County building. The property was rezoned R-3 by the Waltons and they expended substantial sums of money with a view towards constructing and selling fourplexes. In the early 1960's they attempted to build upon one of the lots but were told by the County that they would first have to get permission from the State Highway Commission. This was denied and the overall effect of both the County and the State attempt in acquiring the real property in question was to prevent the Walton's from improving or selling their property as they had orginally intended from 1961 until the purported tax sale.

The County of Sacramento in 1961 purchased acreage adjacent to the Walton's property for the construction of a Juvenile Center and other County buildings. Before construction could start it was necessary to install sewers and storm drains, so the County instituted proceedings for creation of a sewer

and storm drain district. Local land owners of the proposed district banded together and were able to defeat this measure. In response the County divided the larger area into smaller sections successfully establishing a sewer and storm drain district which included the Waltons' property. Prior to the creation of the district yearly taxes on the property had been $143 but with the bond assessment the total increased substantially to a figure of approximately $5,000 per annum. Petitioners were unable to pay the newly approved assessment because the County and State's actions made it impossible for them to either sell or develop their property. Due to this inability to pay, John Walton met with the County Tax Collector, Chauncey LaRue, to explain the circumstances surrounding the delinquent taxes and bond assessments owed. Mr. Walton explained the situation to Mr. LaRue and assured him that as soon as the State Highway Commission either gave him a clearance to build, bought the frontage needed or ran the freeway through their property, he and his wife would pay any delinquency. After hearing the Walton's plight, Mr. LaRue agreed to hold up any action against the Waltons until the Highway Commission made some form of settlement. Thereafter, in reliance upon the County Tax Collector's promise and in the belief that the State and possibly the County would ultimately purchase their property or release it for sale or development, thereby giving them the necessary monies to pay the delinquent amount, the Waltons ceased to pay any further taxes.

Sacramento County, after taxes have become delinquent, prepares an abstract and for each year that taxes are unpaid, the amount owed is added to the abstract. During the fiscal year 1962-63 the Walton's taxes went delinquent for the first time and a notice of nonpayment was mailed in 1963. On June 28 of that same year the Waltons' property was first sold to the State and at that time an abstract was prepared in the names of John Walton and Rachel Walton as joint tenants, 3915 Mayhew Road, Sacramento, California. Each year thereafter, tax bills were mailed to the Waltons stating that their property had been "sold to the State" for taxes and assessments owed. Mr. Alvord, presently the County Tax Collector of Sacramento, testified that the normal procedure followed by the County, is to deed the land to the State after five (5) years of delinquency. In the present case the Waltons' property was not deeded to the State for eleven (11) years. Mr. Alvord was unable to explain this two-fold delay and it is the Petitioners' contention that this discrepancy was due to the agreement made between Mr. LaRue and the Waltons, not to proceed with a delinquency tax sale until the Highway Commission settled. Mr. Alvord in his deposition acknowledged that he thought there was some agreement between the former tax collector and the Waltons.

Before property is deeded to the State, each listed assessee is to be sent written notice of the pending action pursuant to California Revenue and Taxation Code Section 3701. This is accomplished in Sacra-

mento County by sending a form letter. John Walton was first sent such a notice by certified mail in June 1972; no notice was sent to Rachel Walton, the other listed assessee. Despite Mr. Walton's receipt of notice, the property was not deeded to the State and the Abstract of Delinquent Property Taxes was stamped, "Tax Deeded Sale—Cancel" at an undetermined time for as yet unexplained reasons according to Mr. Alvord, the County Tax Collector. In June of 1973 an identical notice was sent to John Walton and while Rachel Walton admittedly signed the certified mail receipt for her husband's letter of notice she was not personally made aware of the deeded action. In October 1973, a Notice of Sale of Tax-Deeded Property was mailed to John Walton informing him that his interest in certain real property would be sold on October 30, 1973, unless redemption was made before that date. Rachel Walton was not sent any such notice despite her status as a joint tenant and listed assessee. Her address was the same as on the assessor's roll although she was suffering from cancer and staying in a hospital at the time notice should have been sent.

John Walton after receiving this latest notice sought legal advice from his then attorney. Counsel advised him that the State should have recorded a *notice of lis pendens* as required by the California Code of Civil Procedure Section 1243 and since the State failed to do so Mr. Walton's attorney filed the *lis pendens* with the County Recorder on October 15, 1973 as Instrument Number 98756 advising him this

would block any projected sale. Secured by the presumption that his interest was fully protected, Mr. Walton went to the tax sale for the purpose of finding out who was going to purchase the parcel of land directly north of their property. To his surprise and dismay he discovered that their property was being auctioned despite the State's eminent domain action, the assurances of Mr. LaRue that their property would not be sold and the recently recorded *lis pendens*. At this point Mr. Walton was naturally unsure of what was actually occurring and he requested that the sale be halted or postponed until the following day so he could redeem the property by paying off the $68,000 in back taxes. Unable to persuade Mr. Alvord to delay the sale Mr. Walton visited Mr. John Heinrich, County Counsel, that morning and was informed that the sale of the Waltons' parcel would proceed as planned and he would not allow the sale of that parcel to be continued to the second day of the County's tax sale. Mr. Alford completed the auction allegedly selling the Waltons' property to one Louis J. Papagianopoulos for the sum of $26,500, a surprisingly low figure considering the Waltons would have had to and in fact agreed to redeem the property for the total sum of the tax delinquency, $67,996.77. Thereafter the alleged deed to the property was mailed by the County to one Angelo J. Tsakopoulos after it was recorded. The Waltons were thus deprived of their property and the county taxpayers lost $41,500 if the Summary Judgment is upheld.

Legal proceedings:

On April 17, 1974 Respondent Papagianopoulos filed his action for unlawful detainer, trespass, preliminary injunction to remove continuing trespass, damages and declaratory relief. Petitioners responded by filing their Answer and a Cross-Complaint to Quiet Title and to Remove Cloud on Title against Papagianopoulos, the State of California and the County of Sacramento. Through his attorney, Papagianopoulos then made a Motion for Summary Judgment on his First, Third and Fifth causes of action and on the Cross-Complaint on the grounds that there was no triable issue of material fact and that there was no defense to the action. Counsel for the County of Sacramento filed a similar Motion for Summary Judgment on the basis that the Waltons' Cross-Complaint was devoid of merit and that there was no triable issue of fact presented. After the matter was argued and submitted, Judge Babich granted Papagianopoulos' Motion for Summary Judgment on his First, Third and Fifth causes of action and he granted both the County's and Papagianopoulos' Motions for Summary Judgment of Dismissal on the Cross-Complaint without written decision or comment. (See Appendix B infra).

The federal questions of due process and equal protection sought to be reviewed here were initially raised as part of the affirmative defense in the Petitioners' answer. There the Waltons charged that "by failing to follow all necessary procedural steps as set forth in the Revenue and Taxation Code of the State

of California" the purported tax sale under which the Respondent, Louis J. Papagianopoulos, allegedly purchased the subject matter real property should have been found defective, void, invalid and of no effect as a violation of due process. Petitioners also set the foundation for further allegations of due process and equal protection violations in their second amended cross-complaint when they requested leave of the court to further amend their cross-complaint at such time when they could ascertain each and all of the statutory defects in the procedure followed by Respondents in selling and acquiring the Waltons' property. This request of the court was made for the purpose of preserving the Petitioners' constitutional rights and guarantees until such time that further discovery, primarily the depositions of Mr. LaRue and Mr. Papagianopoulos, who left for Greece shortly after the sale of the Waltons' property and where he remained until recently, could be obtained.

On appeal, the Court of Appeal of the State of California, Third Appellate District, generally ruled against the Petitioners' contentions. Specifically, the court ruled that John Walton had received written notice of the tax collector's intent to deed the land to the State and of the subsequent sale at public auction and thereby was not deprived of due process. With respect to the issues incidental to the federal question of due process, the court found that the County, as an agent of the State was not estopped by Mr. LaRue's representations from claiming that a valid tax sale had taken place. Rachel Walton had alleged

at the trial level as an affirmative defense, supra, and on appeal that she had been denied procedural due process as she had not been sent written notice of either the tax collector's intent to deed the land to the State or of its subsequent tax sale. Her claim was based upon the argument that the policy followed by the Sacramento County Tax Collector in sending notices of tax deeded sales systematically discriminated against women generally and married women more particularly. Notices of pending tax actions were not sent to the wives of listed assessees even though they were joint owners of the property and listed as such on the assessor's rolls. The Appellate Court ruled that the issue of gender-based discrimination was being raised for the first time on appeal and therefore was not reviewable on the present record. (See Appendix A, infra, p. vii, fn. 4). This decision appears to be incorrect for two reasons; first, it was implicit from the pleading of the affirmative defense that Rachel Walton was denied due process as a direct result of the discriminating procedure followed by the County Tax Collector in sending notices and secondly, one of the purposes for requesting leave to amend their cross complaint was to allow the Petitioners time to discover more information in order to develop this argument and be ready to proceed to trial where the issue could be raised properly and tried.

Following the decision of the Appellate Court, Petitioners timely moved for a rehearing on July 13, 1977. This motion was denied and from there the Waltons appealed to the Supreme Court of the State

of California. In their appeal they once again raised the federal questions of due process and equal protection but the Supreme Court on September 15, 1977 denied the petition for hearing without comment or written decision.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH THE EQUAL PROTECTION PRINCIPLES WHICH HAVE BEEN ENUNCIATED BY THIS COURT RESULTING IN A GRAVE MISCARRIAGE OF JUSTICE.

While the specific constitutional issue of gender-based discrimination raised in this Petition is not novel to this Court, the circumstances surrounding this plea are unique. The gender cases brought before and decided by the Supreme Court since 1971 have been concerned with either federal or state statutes which on their face discriminated against males or females. *See, Reed v. Reed,* 404 U.S. 71 (1971); *Kahn v. Shevin,* 416 U.S. 351 (1974); *Stanton v. Stanton,* 421 U.S. 7 (1975); and *Craig v. Boren,* 429 U.S. 190 (1976) which were cases involving state statutes while *Frontiero v. Richardson,* 411 U.S. 677 (1973); *Schlesinger v. Ballard,* 419 U.S. 498 (1975); *Weinberger v. Wiesenfeld,* 420 U.S. 636 (1975); and *Califano v. Webster,* 430 U.S. 313 (1977) raised constitutional challenges of federal legislation. In the instant case, Petitioner Rachel Walton is not attacking California Revenue and Taxation Code Section 3701 as being repugnant to the equal protection clause of the Fourteenth Amendment; rather she is assert-

ing that it was the application of the code section by the Sacramento County Tax Collector which caused her to be denied procedural due process.

Although this Court has not directly considered the question of statutory gender discrimination "as applied" it has set forth principles and guidelines in other decisions concerning prima facie invalidity which were apparently disregarded by the California Supreme Court when denying Petitioners' request for a hearing. In the 1971 case of *Reed v. Reed,* 404 U.S. 71 (1971) this Court decided that statutory classifications of gender based distinctions were "subject to scrutiny under the Equal Protection Clause." (at 75). Subsequent cases, as pointed out in *Craig v. Boren,* 429 U.S. 190 (1976) "established that classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." (at 97). *Califano v. Goldfarb,* 430 U.S. 199 (1977) and *Califano v. Webster,* 430 U.S. 313 (1977), two 1977 cases further upheld the use of the rational relation test as the index for establishing gender-based discrimination.

For the California Supreme Court to have found that there was not a gender-based discrimination in the application of Code Section 3701 it would have been necessary to have shown a valid relationship between the failure of the County Tax Collector to mail notices to listed women assessees and the Code Section's intended purpose. This appears highly unlikely for two reasons. First, the wording of the code section specifically states that notice must be sent to the

last named assessee "of each portion of the property" thus the intended purpose was to notify each and every assessee not just the husbands of jointly held property. Secondly, as a possible justification for not sending notices to listed women assessees, it may be argued that since the husband and wife were listed at the same address it would be more efficient, less costly and more convenient to send but one notice. Recent decisions of this Court, however, refuse this contention. The *Reed* case rejected a similar objective of "reducing the workload on probate courts" (at 76) and in *Craig* it was stated that decisions "following *Reed* similarly have rejected administrative ease and convenience as sufficiently important objectives to justify gender-based classifications." at 198). Therefore, as there appears to be no rational relation for discrimination as to this class of persons, married women, the lower Courts of California have decided a federal constitutional question in a way that is clearly not in accord with applicable decisions of this Court.

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2. REVIEW BY THIS COURT IS WARRANTED TO RESOLVE FEDERAL CONSTITUTIONAL ISSUES OF WIDE IMPORT; EQUAL PROTECTION AND DUE PROCESS, THE RESOLUTION OF WHICH WILL HAVE IMMEDIATE IMPORTANCE FAR BEYOND THE PARTICULAR FACTS AND PARTIES INVOLVED IN THIS CASE.

California Revenue and Taxation Code Section 3701 reads in pertinent part that "the tax collector shall send a notice by registered mail of the intended sale to the last assessee of each portion of the prop-

erty at his last known address." However, in carrying out this statute, the Sacramento County Tax Collector systematically and intentionally failed to send notices to a particular class of listed assessees, married women who were joint owners of the subject property. This selective and discriminatory application of the California code section deprived not only Rachel Walton of her property but all tax-delinquent married women assessees in Sacramento County their property without due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution. In summation, then a particular group or class of persons were denied the opportunity to contest the states "taking" action on the occasion to redeem their property before any tax sale was consummated. Thus the arbitrary action taken by the County Tax Collector makes the due process issue not only of interest and inportance to the Petitioner Rachel Walton but to married women property owners in Sacramento County and perhaps the entire State if similar procedures are being followed by tax collection agencies.

For this reason alone, this Court should grant the Writ of Certiorari.

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3. REVIEW BY THIS COURT OF THE DECISION OF THE CALIFORNIA STATE COURTS GRANTING AND SUSTAINING THE MOTION FOR SUMMARY JUDGMENT IS NECESSARY OTHERWISE TRIABLE ISSUES OF FACT CONCERNING SUSPECTED FRAUD AND EQUITABLE ESTOPPEL WILL PASS UNQUESTIONED.

As the motion for summary judgment is the procedural equivalent of a trial the remedy is considered

to be a drastic measure and for that reason the California Supreme Court has stated that it "should be used with caution so that it does not become a substitute for an open trial." *Rowland v. Christian,* 69 Cal.2d 108, 111, 70 Cal.Rptr. 97, 99, 443 P.2d 561, 563 (1968). The Supreme Court also has said that "doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion." *Joslin v. Marin Municipal Water District,* 67 Cal.2d 132, 147, 60 Cal.Rptr. 377, 387, 429 P.2d 889, 899 (1967). This Court in interpreting and analyzing Rule 56 of the Federal Rules of Civil Procedure has decided that summary judgments are authorized "only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, . . . [and where] no genuine issue remains for trial . . . [for] the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try." *Poller v. Columbia Broadcasting System Inc.,* 368 U.S. 464, 467 (1962) citing from *Sartor v. Arkansas Natural Gas Corp.,* 321 U.S. 620, 627 (1944). With these thoughts and decisions in mind Petitioners contend that triable issues exist and that the granting of summary judgment works not only to their personal detriment but to the harm of the people of California.

Petitioners first allege that the issue of equitable estoppel still remains unresolved and that by granting summary judgment they were denied the opportunity to establish that the County Tax Collector, Chauncey LaRue, made clear representations that the County would hold up on any deed to the State or

sale until the Waltons could get some form of settlement from the State Highway Commission. Whether the Petitioners could justifiably rely upon the County Tax Collector's statement is a question of fact that should be decided in a formal trial on the merits not in a summary procedure, for if the promise was made as declared by Mr. Walton, the legal issue of estoppel arises and case law supports the proposition that summary judgment should not be granted. *Towne Development Co. v. Lee,* 63 Cal.2d 147, 45 Cal.Rptr. 316, 403 P.2d 724 (1965) (summary judgment improperly granted where a triable issue was raised as to whether dependents were estopped from attempting to cancel a contract, at 148-149): *Simmons v. Civil Service Employees Insurance Company,* 57 Cal. 2d 381, 19 Cal.Rptr. 662, 369 P.2d 262 (1962) (where a summary judgment against an insurer could not be supported on the theory of estoppel, at 384-85).

Secondly, the Petitioners averred that the possibility of fraud existed with respect to the sale of their land on the part of the County and/or the State, and furthermore, that the Respondent Papagianopoulos may also have been involved and for this reason a full trial would be necessary to gather and present evidence of such activity. Certain fundamental questions need to be answered to determine whether fraud was in fact involved in the tax sale of the Petitioners' property and this cannot be done summarily.

1. Why didn't the County apply to purchase the property pursuant to Section 3695.4 of the California Revenue and Taxation Code when

the County had been negotiating to buy part or all of the property for twelve years?

2. Why did the County tax officials permit this land that was assessed on the Abstract of Delinquent Property Taxes at $25,201 or a market value of $100,804 be sold for $26,500?

From these questions other unresolved issues appear. Was there a scheme to defeat the Petitioners' right to a fair market value? Was there a plan or design to have someone purchase the property for relatively little value and then resell it to the County for a substantial profit? If so, who was involved? Finally, why did the County move for a summary judgment of dismissal to defeat the Petitioners' Cross-Complaint when it would have been to the County's benefit generally for the Petitioners to prevail at the trial? As the County would have received $67,996.77 plus any other accrued interest and penalties instead of only $26,500.

Petitioners contend that these unanswered questions and allegations on the issue of fraud can only be equitably decided in a formal proceeding. This Court in its decision of *Free v. Bland,* 369 U.S. 663 (1961) gave credence to this contention when it found that controverted allegations of fraud cannot be resolved upon a motion of summary judgment, but only by a trial on the merits. (at 671). For these reasons it is submitted that this case presents a question of public as well as personal importance which merits review by this Court.

Substantial issues of law and fact were incorrectly stated or were not considered in the opinion of the lower court (Appendix B) which contributed to the unjust and erroneous decision.

The opinion does not point out that since 1961 the Petitioners had had their property frozen by the State and County and were unable to develop it or sell it. They were not sitting on the land like squatters waiting to make a profit out of either of the governmental bodies. They were caught in a bind between the desires for acquisition by both the State and the County and were played one against the other.

During the period that the State and County desired to acquire some or all of the property, the Petitioners tried repeatedly to develop part of it for eleven years. As Mr. Walton said in his deposition (p. 11):

> ". . . I couldn't build on it. The County wouldn't let me build on it because they told me at the County that you would have to get an okay from the State Highway Department to build on it."

The okay was never given. During all the years that the Waltons owned and occupied said real property, they had expended substantial sums of money including engineering and other studies with a view toward developing and improving it. They had the property rezoned and were ready to build fourplexes but could never get the permit to build from 1961 until the date of the alleged sale to Respondent.

Caught in this position, Mr. Walton went to speak to the County Tax Collector, Chauncey LaRue, in 1966. His description of the conversation, which is unrefuted, is contained in his deposition at pages 12 and 13 as follows:

> "Yes, I'm no dumbbody. I know I owe taxes, but in 1966 I went down and had a long conversation with Mr. LaRue. That was when Mr. LaRue was taking care of my property, and we sat there for over an hour, two hours, and I explained to him why that I wouldn't pay my tax or couldn't, and why that it was delinquent, and I said as soon as the State Highway Commission will give me a clearance on this frontage and to buy the frontage, if they are going to buy it, or run the freeway through my property, and they haven't abandoned this freeway, and that I felt that being's the State owed me money and was not letting me develop my own property like it should be developed, because I had storm drains and sewers on it. I had everything else to develop, and I had my zoning, and the State was holding me up, so I explained that to Mr. LaRue, and he says, 'Well, John,' he says, 'I see where you are in pretty bad shape,' and he says, 'I'll tell you what,' he says, 'I'll hold this up until you can get some kind of form of settlement from the State Highway Commission."

Thereafter, in reliance on Mr. LaRue's statement and in belief that the State and possibly the County would ultimately purchase their property and from the proceeds the Waltons would pay the delinquent taxes, they ceased to pay any further taxes. If on the

other hand, the State and the County released their hold on the property, the Petitioners could pay their taxes from the proceeds of selling or developing the property according to their plans.

The opinion also makes no mention of the peculiar fact that the subject property was not deeded to the State for eleven years after the taxes went delinquent. The deposition of Mr. Alvord, the Tax Collector at the time of the sale, confirms this unique situation. He testified that normally properties in Sacramento County, as well as in the State generally are mandatorily deeded to the State at the end of five years of delinquency. There were eleven years of delinquent taxes at the time this property was first deeded to the State.

This unusual delay certainly confirms the conversation of Mr. LaRue and why the Petitioners had every right to rely on his statement that the County would hold up until there was a settlement with the State.

The unusual circumstances in this case are such that the County should have given all holders of the subject property actual notice that the County's position had changed and they were going to sell the property. The notices in this case hardly satisfy the requirement of "due process" under this fact situation.

Each year the Petitioners were sent tax bills which had typed on them: "Sold to the State" commencing with the 1963-64 tax bill. A Notice was sent to Mr.

Walton in June of 1972 advising him that the property was to be deeded to the State. The difference between "deeded" and "sold" to the State was not understood by the Petitioners. Following the Notice, nothing happened which was any different than receiving the tax bill each year which stated, "Sold to the State". The next June, Mr. Walton received an identical notice that the property was to be deeded to the State. Under this unusual fact situation, this hardly alerted either of the Petitioners that their property was to be sold contrary to Petitioners' understanding with the County Tax Collector.

Mrs. Walton was not sent any notice in October, 1973 advising her of the proposed sale of her property. She knew nothing of the October notice in advance of the actual sale. The opinion is in error when it states that she knew the property was to be sold.

The opinion also recites that the Waltons made no attempt to redeem the property; they sought only to postpone the sale. When Mr. Walton first understood that his property was actually on the block to be sold which was at the sale itself, he asked for a postponement to the next day to enable him to redeem his property. In order for him to redeem, he had to pay the total delinquency which was in excess of $67,000. Why the County refused his request to continue the sale until the next day to allow him to redeem it, and sold the property for $26,500, are facts which should be ascertained by permitting the Petitioners to pursue their recovery.

The opinion seeks to excuse the sending of a Notice to Mrs. Walton based on Revenue and Taxation Code Section 3701 which provides that the failure to make reasonable effort to ascertain the last known address of an assessee does not affect the validity of a tax sale. That is not the point in this case. The Tax Collector had the address of Mrs. Walton. He sent her tax bills each year. However, he did not send her any notices that the property was to be deeded to the State, nor did he send her a notice of the sale of the property.

The decision relied substantially upon *McMaster v. City of Santa Rosa* (1972) 27 Cal.App.3d 598 and *Chesney v. Gresham* (1976) 64 Cal.App.3d 120 in which a Writ of Certiorari was denied on June 17, 1977. However, when all the facts are examined, these cases are not in point. Neither of the cases cited had the estoppel issue present nor was the evidence of any sexual discrimination. They were the usual tax sale cases where taxes were not paid for five years and then the taxing agency proceeded with a tax sale. Publication was deemed to constitute due process in those two cases.

The decision herein correctly points out that the fundamental requirement of due process is *notice,* reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action and to afford them opportunity to be heard. Under all the extraordinary facts of this case, the Petitioners have been derived of due process, and the form notice sent only to Mr. Walton was not sufficient

notice to apprise all the interested parties of the pendency of the tax sale and to afford them opportunity to be heard as well as to redeem their property.

Should the summary judgment be upheld, no person of limited means would be safe in their right to hold property when a governmental entity desired to acquire it by whatever means.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted to review the judgment and opinion of the Appellate Court of the Third District of the State of California and the denial of a hearing by the Supreme Court of California.

Respectfully submitted,

BARBARA LANG BETTS,
Mailing Address:
441 Sandburg Drive,
Sacramento, California 95819,
Counsel for Petitioners.

December 8, 1977.

(Appendices Follow)

Appendices

Appendix A

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

In the Court of Appeal
State of California
Third Appellate District
(Sacramento)

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3 Civil 15189
(Super.Ct. No. 246594

Louis J. Papagianopoulos,
Plaintiff and Respondent,
vs.
John Walton, Jr., and Rachel Walton,
Defendants and Appellants,

John W. Walton, Jr., and Rachel Walton,
Cross-Complainants and Appellants,
vs.
Louis J. Papagianopoulos, County of Sacramento, and State Controller of the State of California,
Cross-Defendants and Respondents.

[Filed June 14, 1977]

Opinion

John W. Walton and Rachel Walton, his wife, appeal from summary judgments in favor of plaintiff and cross-defendant Louis J. Papagianopoulos and cross-defendant County of Sacramento. Papagianopoulos, purchaser of the tax-deeded real property in issue, filed an action in unlawful detainer seeking damages, injunctive relief and a declaration of his rights in the subject parcel. The Waltons cross-complained against Papagianopoulos, the county and the State of California, to quiet their title to the parcel by invalidating the tax sale to Papagianopoulos (hereinafter "buyer"); they also sought damages. The cross-defendants in their answers to the Waltons' second amended cross-complaint denied the existence of fatal irregularities in the tax sale and set up as a defense the Waltons' contributory negligence. Buyer filed a motion for summary judgment on his complaint and both he and the county moved for summary judgment on the Waltons' cross-complaint. The Waltons unsuccessfully opposed the motions. The trial court held buyer to be owner in fee of the property claimed by the Waltons and ordered issuance of a writ of possession. The Waltons' cross-complaint against buyer and the county was dismissed.

Facts

The record before the court and the supporting declarations filed with the motions for summary judgment reveal the following:

The Waltons, as joint tenants, purchased the subject property in 1958 for $35,000, and have resided upon it since that time. In 1959, the Legislature approved a state highway route which crossed the property. The following year, the county acquired land adjacent to that owned by the Waltons. In 1961, the state started negotiations with the Waltons for purchase of a portion of their property. The negotiations proved fruitless, and on October 18, 1972, the state filed an action in eminent domain for the purpose of acquiring "all or a substantial portion" of the property.

After 1963, the Waltons' real property taxes increased markedly. Mr. Walton concluded from the increase that the real property was appreciating in value. In the belief that the state or the county would ultimately purchase all or a portion of the property at a price substantially in excess of that which he and his wife had originally paid, Mr. Walton failed to pay the property taxes, intending to pay the accrued taxes, interest and penalties out of his soon-to-be-realized profits from the sale of the land.

The county assessor's file on the parcel reveals that the taxes first went delinquent for the fiscal year 1962-1963. Notice by certified mail that the property was to be deeded to the state was first sent in June 1972; because of a defect in the tax deed which followed, another notice was sent in June 1973. Rachel Walton signed the receipt for that notice on June 9, 1973. The property was conveyed to the state by deed dated July 6, 1973, recorded July 11, 1973.

On October 5, 1973, notice was sent that the land would be sold at public sale on October 30, 1973. John Walton received the notice of the impending sale on or about October 6, 1973. Notice of the tax sale was also published in the Sacramento Union on October 9, 16, and 23, 1973. Upon receipt of the October notice of sale, Walton referred the matter to his attorney, who, on October 15, 1973, recorded a notice of lis pendens in the condemnation action.[1] Walton asserted by declaration that no conduct by the State of California[2] had ever put him on notice that his ownership interest in the property was impaired.

On the morning of the tax sale, Walton went to the tax assessor's office "for the purpose of satisfying [his] curiosity as to who if anyone, purchased certain parcels of real property adjoining [his parcels]." Upon discovering that his parcel was to be sold, he requested a continuance of the sale; the request was refused by the assessor.

The highest bid, $26,500, was made by buyer, and the property was sold to him. The parties accept

[1]The excerpts from the Walton depositions contained in the declaration filed by attorney Wohl in support of buyer's motion for summary judgment confirm generally the Waltons' receipt of notice. Rachel Walton acknowledged receiving the notice of June 9, 1973; she knew that the taxes on the parcel were delinquent. She was with her husband when he opened the notice that the property would be deeded to the state; she knew that the property was going to be sold. John Walton testified that in October 1973, he knew that the property would be sold for tax delinquency; he relied on his counsel's advice that the lis pendens would prevent the sale, or he would have redeemed the property.

[2]Although a cross-defendant in the trial court, the state is not a party to this appeal.

the fact that the Waltons' delinquency exceeded $67,000.00.

I

It is well settled that a "[s]ummary judgment may be rendered only when no triable issue of fact is presented. [Citation.] If any triable issue of fact exists, it is error for the trial court to grant a party's motion for summary judgment. [Citations.]" (Robinson v. City and County of San Francisco (1974) 41 Cal. App.3d 334, at 337; R. D. Reeder Lathing Co. v. Allen (1967) 66 Cal.2d 373, at 376.) It is not any issue of fact, however, which will defeat a summary judgment; the issue of fact must be material. (Aguirre v. Southern Pac. Co. (1965) 232 Cal.App.2d 636, 641-642; see also, Buehler v. Oregon-Washington Plywood Corp. (1976) 17 Cal.3d 520, 526; Loma Portal Civic Club v. American Airlines, Inc. (1964) 61 Cal.2d 582, at 588.) The requirement that the issue of fact be material is now expressly stated in Code of Civil Procedure section 437c. (See 5 Pac.L.J. (1974) Civil Procedure, Summary Judgments, pp. 205, 289-295.)

The uncontroverted facts disclose that the Waltons were delinquent in their real property taxes on the subject parcel from fiscal year 1962-1963 through and including 1972-1973. Notice was received by them in June 1972 and 1973 that the property would be deeded to the state unless the arrearages and penalties were paid. The property was thereafter so deeded. By notice received October 6, 1973, the Waltons were notified that the property would be sold on October 30, 1973, to the highest bidder at public sale. The notice

stated that the property could be redeemed by payment of the back taxes, which right would terminate upon receipt of the first bid. Notice of the scheduled sale of a number of the tax deeded parcels, including that of the Waltons, was also duly published. The Waltons made no attempt to redeem the property; they sought only to postpone the sale.

II

The sale of the Walton property to the state and its later sale to buyer were conducted under applicable provisions of the Revenue and Taxation Code, to which all subsequent section references relate.

The tax collector deeded the Walton property to the state in 1973 (§ 3511) after complying with all necessary notice and other procedural requirements (§§ 3351, 3361-3366, 3517). Thereafter, as we have seen, he duly scheduled and noticed the sale of the Walton property (along with other delinquent parcels) at public auction. (§§ 3691-3731.)[3] Upon acceptance of his bid in the amount of $26,500, buyer received his deed from the tax collector. (§§ 3706, 3708-3712.)

III

The Waltons attack the validity of the sale to buyer upon the ground, inter alia, that Rachel Walton received no written notice directed to her of either the tax collector's intent to deed to the state or of the subsequent sale at public auction; that as a joint owner jointly responsible for the tax liability, she was entitled to such separate written notices. They contend that the omission of notices addressed to her was a violation of due process of law, jurisdictional in nature, and thus not subject to curative statutes or remedial legislation.[4]

[3]Section 3701 provides that the tax collector shall send a notice by registered mail of the intended sale to the last assessee of the property at his last known address, and that he shall make a reasonable effort to ascertain the address of the last assessee of the tax-deeded property. The section provides further that *the failure to make such reasonable effort does not affect the validity of the sale.*

With respect to the claim of inadequate notice of intent to deed to the state, section 3518 provides that such deed "is conclusive evidence, except against actual fraud, of the regularity of all other proceedings from the assessment of the assessor to the execution of the deed, both inclusive." Similarly, the deed received by buyer at the public sale is, except as against actual fraud, "conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed, both inclusive." (§ 3711.)

The Legislature's right to establish procedures by which property is taken from private ownership, transferred to the state, and resold is not unlimited. Legislation must be consistent with constitutional guarantees. (Miller v. McKenna (1944) 23 Cal.2d 774, at 782; City of Compton v. Boland (1945) 26 Cal.2d 310, at 315-316.) " 'While the Legislature cannot cure the omission of jurisdictional requisites, the manner

[4]The absence of notice directed specifically to Rachel Walton is also relied upon by the Waltons as the basis for the claim that the county practices sex discrimination. This issue, asserted for the first time on appeal, is not reviewable on the present record.

of procedure, after jurisdiction is acquired and the mandates of due process are complied with, are matters within the legislative discretion and may be subject to the exercise of the healing power [curative acts] so long as further constitutional inhibitions are observed.' Likewise, the Legislature may prescribe changes in the manner of pursuing jurisdictional steps. If the notice is adequate to comply with due process the Legislature may make changes in the mode or manner of giving notice, or the details of the matter to be contained therein." (City of Compton, supra, 26 Cal.2d at 315-316.)

In McMaster v. City of Santa Rosa (1972) 27 Cal. App.3d 598, the constitutional requisite of notice in the context of tax sale proceedings is discussed at length. There the court noted that "although it is a matter of common knowledge that failure to pay property taxes can result in penalties, including loss of the property, the property may not be taken from its owner without due process of law. The fundamental requisite of due process is *notice,* reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action and to afford them opportunity to be heard (Mullane v. Central Hanover Tr. Co. (1950) 339 U.S. 306, 314 [94 L.Ed. 865, 873, 70 S.Ct. 652]; Milliken v. Meyer (1940) 311 U.S. 457, 463 [85 L.Ed. 278, 283, 61 S.Ct. 339, 132 A.L.R. 1357]). While there is no constitutional mandate which makes specific how that notice is to be given or which form it must take, the questions of notice and due process are so inextricably

part and parcel of each other that there can be no due process without the sovereign following some procedure which, according to common experience, should reasonably give notice of impending interference with ownership or right of possession. (Litchfield v. County of Marin (1955) 130 Cal.App.2d 806, 813.)" (*Id.* at pp. 601-602; see also, Chesney v. Gresham (1976) 64 Cal.App.3d 120, 128-129.)

We reject the Waltons' claim that they were inadequately notified of the impending deed to the state and subsequent public sale, based on the failure of the tax collector to direct notices thereof to Mrs. Walton separately. It is clear that the statutes which authorize the instant procedures do not require as a prerequisite to a valid deed that such notices be sent each joint owner. That conclusion is implicit in the provisions that the deeds to the state and to the subsequent purchaser are not invalidated by the failure of the tax collector to take reasonable steps to ascertain the address of the assessee. (§§ 3365, 3701.)

A similar due process argument premised upon lack of actual notice to an individual property owner was rejected in Chesney v. Gresham, supra, 64 Cal.App.3d 120, where the court pointed (at p. 128) that since the requirement of notice " 'could have been omitted by the [Legislature] in the first place,' " a failure to comply with such notice requirement is not jurisdictional. As Philbrick v. Huff (1976) 60 Cal.App.3d 633 emphasizes, at page 640: "A defect in a tax proceeding is not jurisdictional where it 'has been for nonobservance of some procedural notice or other step

which the Legislature, without defiance of state or federal Constitution, might have dispensed with altogether.'" (See also, McMaster v. City of Santa Rosa, supra, 27 Cal.App.3d 598, 604-605.) On this basis it has been held that notice by publication (§ 3702) "'is all of the "due process" notice to which the delinquent taxpayer is entitled, and that "[a]s far as the mailing of additional notices of sale prior to the sales to and from the State, or the mailing of any additional notices at all is concerned, such notices could have been done away with or not required by the legislature in the first instance without doing violence to due process.'" (Chesney v. Gresham, supra, 64 Cal. App.3d 129 (citing from McMaster v. City of Santa Rosa, supra).)

Additionally, the Waltons' position on appeal fails to recognize the significant difference which exists between the land owner's rights prior to and after deeding of his property to the state. "The cases make it explicit that the notice required by statute in tax sale proceedings is designed to afford the property owner protection and enable him to pay taxes *before the title passes from him* [citation]. Based upon this premise, it has been held that, *where* the taxing power has acquired private property by due process of law and *the title has passed to the state, the state may* without violating any rights or due process, *sell the property without giving notice to the individual owner* at all, or may give such notice as, in its discretion seems proper [citations]." (McMaster v. City of Santa Rosa, supra, 27 Cal.App.3d at p. 602; see Litchfield v. County of Marin (1955) 130 Cal.App.2d 806, 816-817.)

A definitive statement of this rule appears in Fox v. Wright (1907) 152 Cal. 59, at page 61: "[S]ince the owner had received due notice by publication of the fact that his taxes were delinquent and the property had been sold to the state for such delinquency, it was not necessary to the validity of the proceedings that any notice of the intended sale *by the state* should be given to him at all. Indeed, the state might have provided that such sales could be made in private." (Emphasis added.)

We note in passing the public policy underlying sales first to the state, and thence to private buyers of tax delinquent properties. The Supreme Court has expressed that policy as follows: "The purpose . . . is to rehabilitate tax-deeded property and procure its return to the tax rolls. The accomplishment of the purpose is conducive to equality in assessments for the support of government and therefore to stability in government." (City of Compton v. Boland, supra, 26 Cal.2d at p. 316; see also, McMaster, supra, 27 Cal.App.3d at p. 605.)[5]

---

[5]The rule was earlier stated thusly: "For two reasons it is to the benefit of the state that property so acquired should by it be resold into private ownership. The first, because it is inexpedient that the state should be charged with the burden of the care of many such parcels of property, its administrative machinery not being adapted to such end. In the second place, it is desirable always that the ownership of state lands, saving those which are necessary for its governmental functions, should be transferred to its citizens, whereby follow increasing population and the higher development, betterment, and improvement of the land, thus adding greatly to the wealth of the state." (Fox v. Wright, supra, 152 Cal. at pp. 62-63.)

IV

The Waltons urge, on the basis of John Walton's declaration, that the county, as an agent of the state, is estopped from claiming that a valid tax sale took place. The facts on which the Waltons base their contention that an estoppel arises are: (1) They had been dealing with the county and the state with reference to the possible acquisition of all or part of their property; (2) taxes on the property were not paid on the assumption that such a sale would be made and the taxes would be paid out of the profit realized; (3) the State of California filed a condemnation action; and (4) after the Waltons were advised of the pending tax sale, the State of California continued to treat the Waltons as owners in fee of the property.

The elements of an equitable estoppel are: "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (Driscoll v. City of Los Angeles (1967) 67 Cal.2d 297, 305; City of Long Beach v. Mansell (1970) 3 Cal.3d 462, 489.) Each element must be satisfied before the doctrine will be applied. (Johnson v. Johnson (1960) 179 Cal.App.2d 326, 330.)

In the instant case, we first note that the Waltons' assertions respecting the state's conduct, *i.e.*, the manner in which the state dealt with them following the deeding of their property to it, are no more than con-

clusionary. No suggestion is made that state officials in any way imparted to Mr. Walton the belief that he was the owner of the property despite the tax arrearages and deed to the state. Thus, the Waltons presented no basis to determine that the second element could be satisfied. Further, the Waltons did not —and could not—submit any facts from which the trial court could conclude that they were unaware of the true circumstances. They had received notice of the deed to the state, and Mr. Walton (and arguably Mrs. Walton) received notice of the impending sale into private ownership. The fact that the state did not take immediate steps to acknowledge the change of ownership in the pending condemnation action does not nullify the effect of the notice given by the county tax collector. (See County of El Dorado v. Al Tahoe Investment Co. (1959) 175 Cal.App.2d 407, 410-411.)

Conclusion

The Waltons' allegations of irregularity in the proceedings culminating in the tax sale of their property to Papagianopoulos cannot be sustained. No triable issue of material fact was present in respect to either the claimed procedural irregularities or an estoppel. No other contentions advanced require discussion.

The judgment is affirmed.

Janes, J.

We concur:

Puglia, P.J.

Regan, J.

In the Court of Appeal
State of California
Third Appellate District
(Sacramento)

3 Civil 15189
(Super.Ct. No. 246594

Louis J. Papagianopoulos,
Plaintiff and Respondent,
vs.
John Walton, Jr., and Rachel Walton,
Defendants and Appellants,

John W. Walton, Jr., and Rachel Walton,
Cross-Complainants and
Appellants,
vs.
Louis J. Papagianopoulos, County of Sacramento, and State Controller of the State of California,
Cross-Defendants and
Respondents.

[Filed July 14, 1977]

ORDER

By The Court

Appellants' Petition for Rehearing denied.

Dated July 14, 1977

P. J. Puglia

Appendix B

Superior Court of the State of California
in and for the County of Sacramento

Date November 21, 1974.

Court met at Department No. 6
Present Hon. Joseph G. Babich, Judge
J. L. Hagan, Deputy Clerk

Louis J. Papagianopoulos
vs.
John Walton, Jr.

Counsel:

Alvin R. Wohl
John Brownston
Dianna Z. Hoffman

MINUTES

Nature of Proceedings:

Plaintiff's Motion for Summary Judgment on First, Third and Fifth Causes of Action of Complaint; Cross-Defendant Louis J. Papagianopoulos' Motion for Summary against Cross-Complainants on their Cross-Complaint; County of Sacramento's Motion for Summary Judgment against Cross-Complaint

The above-entitled motions having been heard in open court on November 19, 1974; the Court having taken the matter under submission; and now the Court being advised in the premises:

It is Ordered that Plaintiff's Motion for Summary Judgment on the First, Third and Fifth Causes of Action of Complaint is granted; and

It is Ordered that Cross-Defendant Louis J. Papagianopoulos' Motion for Summary Judgment against the Cross-Complaint is granted; and

It is Ordered that Cross-Defendant County of Sacramento's Motion for Summary Judgment against the Cross-Complaint is granted.

Copies Mailed to:

Alvin R. Wohl
A Law Corporation
901 H Street, Suite 503
Sacramento, California 95814

Brownston & White
Attorneys at Law
555 Capitol Mall
Sacramento, California 95814

Fitzwilliam, Stumbos, Memering & DeMers
Professional Corporation
P. O. Box 590
Sacramento, California 95803

Book 346 Page 172

This minute order was duly entered in R/A and a copy placed in the file.

Attest: W. N. Durley
County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Sacramento

County Clerk M.O. 4 Action No. 246594

/s/ J L Hagan, Deputy

Superior Court of the State of California
for the County of Sacramento

No. 246594

Louis J. Papagianopoulos,
Plaintiff and
Cross-Defendant,
vs.
John Walton, Jr., Rachel Walton,
and Does I through V,
Defendants and
Cross-Complainants.

[Filed Dec. 2, 1974]

Order Granting Summary Judgment and
Summary Judgment for Plaintiff

Plaintiff, Louis J. Papagianopoulos', Motion for Summary Judgment on First, Third and Fifth Causes of Action of Complaint, and Cross-Defendant, Louis J. Papagianopoulos', Motion for Summary Judgment against Cross-Complainants on their Cross-Complaint, came on regularly for hearing before me on November 19, 1974. Alvin R. Wohl appeared as counsel for Plaintiff and Cross-Defendant, Louis J. Papagianopoulos, and John Brownston appeared as counsel for Defendants and Cross-Complainants, John Walton, Jr., and Rachel Walton. The Court examined the

pleadings, declarations and Points and Authorities submitted in suport of said Motion, and the matters were argued and submitted.

The Court being fully advised in the premises, and good cause appearing therefor, and the Court having determined that there are no triable issues of fact with respect to said First, Third and Fifth Causes of Action and said Cross-Complaint, the Court finds as follows:

It Is Ordered that Plaintiff's Motion for Summary Judgment is hereby granted on the First, Third and Fifth Causes of Action, and that Cross-Defendants' Cross-Complaint is hereby dismissed.

It Is Further Adjudged And Decreed That:

1. That at the time of the commencement of this action, title to the parcel of real property, situated in the County of Sacramento, and more particularly described hereinafter, was, and now is, vested in Louis J. Papagianopoulos, as owner in fee simple absolute; and that the Plaintiff, Louis J. Papagianopoulos, have and recover of and from the Defendants, John Walton, Jr., and Rachel Walton, the possession of the premises situated in the County of Sacramento, State of California, and described as:

> All that portion of the Northeast one-quarter of Section 17, Township 8 North, Range 6 East, M.D.B.&M., described as follows:
>
> BEGINNING at the Southwest corner of the Northeast one-quarter of said Section 17; thence along the one-quarter section line running North and South, North 627.00 feet; thence at a right angle,

parallel to the one-quarter Section line running East and West through the center of said Section 17, East 1386.0 feet; thence at a right angle, parallel to said one-quarter Section line running North and South, South 627.00 feet to a point on said one-quarter Section line running East and West through the center of said Section 17, thence, along said one-quarter Section line running East and West through the center of said Section 17, West 1386.0 feet to the point of beginning.

It Is Further Ordered, Adjudged And Decreed that a writ of possession is hereby directed to be issued to the Sheriff of Sacramento County, California, directing the Sheriff to remove Defendants and all those claiming by, through or under defendants, and to place Plaintiff in possession of said premises.

Dated: Dec. 2, 1974.

/s/ Joseph G. Babich
Judge of the Superior Court

In the Superior Court of the State of California
in and for the County of Sacramento

No. 246594

Louis J. Papagianopoulos,
Plaintiff,
vs.
John Walton, Jr., Rachel Walton, and Does I through V,
Defendants.

John W. Walton, Jr., and Rachel S. Walton,
Cross-Complainants,
vs.
Louis J. Papagianopoulos, et al.,
Cross-Defendants.

[Filed Dec. 13, 1974]

Order and Judgment of Dismissal

The motion for summary judgment of cross-defendant, County of Sacramento, having come on regularly to be heard at 9:00 A.M. in the above-entitled court on November 19, 1974; Fitzwilliam, Memering, Stumbos & DeMers, a Professional Corporation, by Dianna Z. Hoffman, Esq., appearing in behalf of cross-de-

fendant, and moving party, County of Sacramento; Brownston & White, Attorneys at Law, by John Brownston, Esq., appearing on behalf of cross-complainant, John Walton, Jr. and Rachel Walton; the matter having been argued and submitted; and good cause appearing therefor:

It Is Ordered, Adjudged, And Decreed that said motion for summary judgment be and it hereby is granted; that the cross-complaint of cross-complainants, John Walton, Jr., and Rachel Walton, on file herein be and it hereby is dismissed with prejudice; and judgment of dismissal is hereby entered against cross-complainants, John Walton, Jr., and Rachel Walton, and in favor of cross-defendant, County of Sacramento, with costs in the amount of $.....

Dated: Dec. 13, 1974.

/s/ Joseph G. Babich,
Judge of the Superior Court

Appendix C

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102

Sep. 15, 1977

I have this day filed Order—Hearing Denied.

In re: 3 Civ. No. 15189

Papagianopoulos, et al.

vs.

Walton, et al.

Respectfully,

G. E. Bishel
Clerk

Supreme Court, U. S.
FILED
JAN 10 1978
MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-853

JOHN W. WALTON, JR., and RACHEL WALTON,
Petitioners,

vs.

LOUIS J. PAPAGIANOPOULOS,
COUNTY OF SACRAMENTO and STATE CONTROLLER
OF THE STATE OF CALIFORNIA,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the Court of Appeal of the State of California, Third Appellate District

DIANNA ZBARSKY HOFFMAN,
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-853

JOHN W. WALTON, JR., and RACHEL WALTON,
Petitioners,

VS.

LOUIS J. PAPAGIANOPOULOS,
COUNTY OF SACRAMENTO and STATE CONTROLLER
OF THE STATE OF CALIFORNIA,
Respondents.

BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI
to the Court of Appeal of the State of California,
Third Appellate District

Respondent, County of Sacramento, respectfully prays that the petition for a Writ of Certiorari in the above entitled matter be denied.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the notice to John W. and Rachel S. Walton met the due process requirements of the United States Constitution.

2. Whether there are special and important reasons for accepting certiorari in this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. California Revenue and Taxation Code Section 3701:

> "After receiving the written authorization of the controller and not less than twenty-one or more than twenty-eight days before the proposed sale, the tax collector shall send a notice by registered mail of the intended sale to the last assessee of each portion of the property at his last known address. The tax collector shall make a reasonble effort to ascertain the address of the last assessee of the tax deeded property, including, but not limited to, an examination of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll.
>
> The failure of the tax collector to make a reasonable effort to ascertain the address of the last assessee as required by this section shall not affect the validity of the sale."

2. Californa Revenue & Taxation Code Section 3711:

> § 3711. Deed; conclusive evidence, exception
>
> Except as against actual fraud, the deed duly acknowledged or proved is conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed, both inclusive.

3. The Fourteenth Amendment to the Constitution of the United States:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

John Walton, Jr. and Rachel S. Walton were the owners of the real property here in question, consisting of 20½ acres, which property was acquired by the Waltons in 1958. The Waltons resided on the property since 1958, but failed to pay any real property taxes thereon since the year 1962 (deposition of John Walton, 19; deposition of Alvord, 5).

In June of 1972, a notice was sent to Mr. and Mrs. Walton by the County of Sacramento notifying them that the property would be deeded to the State (Alvord, 5-7). Because there was an error in the deed when the same was recorded, the County again sent the notice to the Waltons on June 9, 1973, by certified mail, which was received by Mrs. Walton (Alvord, 6, lines 8-12). This was notice of the deed from the County to the State.

On October 6, 1973, the County sent out another notice of the tax deeded land sale (Alvord, 6, lines 15-16). Mr. Walton admits that he received notice of this tax deeded land sale on October 6, 1973, and that he knew it was to be sold at public auction on October 30, 1973 (John Walton, 20, lines 10-17).

Mrs. Walton signed for the June 9, 1973 notice of the property being deeded to the State by the County. She admits she had actual notice of the intended tax sale (Rachel Walton, 15-17).

Mrs. Walton also admits that she referred the matter to her attorney after becoming aware of the intended tax sale (Rachel Walton, 17). She further admits that she was aware of the sale but was unable to attend because of her illness (Rachel Walton, 18). According to the testimony of Mrs. Walton, she was in the hospital on October 6, 1973, at the time of the notice of tax sale, but was released the following day, October 7, 1973 (Rachel Walton, 18).

On October 15, 1973, Mr. and Mrs. Walton filed a Lis Pendens with the County Recorder's office of Sacramento County in the hope that this would, in some way, prevent the tax sale of October 30, 1973 (see Second Amended Cross-Complaint, page 8).

On the morning of October 30, 1973, Mr. Walton was present when the tax sale was being conducted (John Walton, 28, lines 4-8). He was standing right next to Mr. Papagianopoulos when the latter made a bid on the sale. Papagianopoulos was the highest bidder and acquired the property at said tax sale for the amount of $26,500.00 (Alvord, 11).

The tax sale was held on October 30, 1973 and was properly advertised in the newspaper as required by law (Alvord, 9-10).

Mr. and Mrs. Walton refused to vacate the premises after the sale was completed and Mr. Papagianopoulos filed suit. The cross-complaint by the Waltons followed, alleging that the County had not given notice to Mrs. Walton and for that reason the deed was void. Summary judgment for the County was granted and defendants and cross-complainants appealed.

The Court of Appeal for the State of California, Third Appellate District, sustained the ruling of the Superior Court, holding that the notice given to the Waltons was all that was required by the Constitution of the United States.

The request for a rehearing was denied, as was the petition to the California Supreme Court.

REASON AND ARGUMENT FOR DENIAL OF THE WRIT

The petition should be denied because the decision of the Court of Appeal does not involve an important question of federal law which justifies review by this Court.

As stated in Rule 19, a review on Writ of Certiorari is not a matter of right, but of sound judicial discretion. A review on writ will be granted only where there are special and important reasons, such as where a state court has decided a federal question of substance not heretofore determined by the Supreme Court, or where a state court has decided a

federal question in a way probably not in accord with the applicable decisions of this Court. *Rice v. Sioux City Memorial Park Cemetery, Inc.,* 349 U.S. 70, 99 L.Ed. 693, 75 S.Ct. 614.

In the instant case, neither of the criteria exist for granting a review on Writ of Certiorari.

While petitioners attempt to raise issues of sex discrimination, due process and equal protection, the record below reveals that petitioner Rachel Walton had actual notice of the tax sale. There is, therefore, no reason why this court should accept this case for review.

Second, at the time the notice of the tax sale was sent to Mr. and Mrs. Walton, California community property laws made the husband the manager and controller of the community property. Civil Code Section 5127.

At the present time, said Civil Code Section has been amended so that husband and wife are joint managers and controllers of communty property.

Hence, any determination by this court that notice should have been sent to Mrs. Walton would be moot, given the change in the California community property laws regarding management and control.

Third, this court should not review the decision of the state court because it is unlikely that the constitutional issue will be reached. Having testified in her deposition that she had actual notice of the tax sale, Mrs. Walton cannot now be heard to claim a constitutional deprivation based on the fact that the written notice was addressed to her husband only. This is not the case for the United States Supreme Court to address the issue of the adequacy of notice directed only to one spouse. Furthermore, no testimony was ever produced that the County of Sacramento routinely sends notice to the husband only, and petitioners' allegation of this is without support in the record.

Another reason for this court's denying review is that the constitutional issues were not raised below. See ruling of Court of Appeal, Appendix A, p. vii, fn. 4.

The Supreme Court ordinarily will not grant certiorari whenever the basis of the state court's decision makes consideration of the asserted federal question unnecessary. *Ellis v. Dixon,* 349 U.S. 458, 99 L. Ed. 1231, 75 S. Ct. 850.

Petitioners have misstated essential facts, bringing before this Court for the first time issues that were not raised below. Initially, respondent points out that there are no citations to the record of alleged facts in petitioners' statement of the case. This Court, if it decides to review this case, will have to settle factually disputed issues before it can reach the legal issues.

Finally, the result below was accurate and fair. Where the petitioner testified under oath that she had actual notice of the tax sale, it would be entirely inappropriate for this Court to rule on the soundness of the notice and to decide whether the notice met due process requirements.

CONCLUSION

For the foregoing reasons, the petition for Writ of Certiorari should be denied.

Dated, Sacramento, California,
January 4, 1978.

Respectfully submitted,
DIANNA ZBARSKY HOFFMAN,
BARRETT, NEWLAN & MATHENY,
Counsel for Respondent
County of Sacramento.

Supreme Court, U. S.
FILED
JAN 10 1978
MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-853

JOHN W. WALTON, JR., and RACHEL WALTON,
Petitioners,

vs.

LOUIS J. PAPAGIANOPOULOS,
COUNTY OF SACRAMENTO and STATE CONTROLLER
OF THE STATE OF CALIFORNIA,
Respondents.

BRIEF FOR RESPONDENT LOUIS J. PAPAGIANOPOULOS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the Court of Appeal of the State of California, Third Appellate District

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-853

JOHN W. WALTON, JR., and RACHEL WALTON,
Petitioners,

VS.

LOUIS J. PAPAGIANOPOULOS,
COUNTY OF SACRAMENTO and STATE CONTROLLER
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Respondents.

BRIEF FOR RESPONDENT LOUIS J. PAPAGIANOPOULOS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the Court of Appeal of the State of California, Third Appellate District

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SUMMARY OF FACTS AND PROCEEDINGS

On June 28, 1963, Petitioners' property was sold to the State of California by the County of Sacramento for nonpayment of property taxes for the fiscal year 1962-63. (See Petition, p. 9.) Petitioners thereafter never paid nor tendered their property taxes, hoping instead to sell the property and pay the taxes with the proceeds. Petitioners claim to have relied upon

erroneous legal advice that, by filing a lis pendens, they had precluded any further action by the State of California.

On October 30, 1973, after actual notice by certified mail to Petitioners, the property was sold at public sale by the state to Respondent Louis J. Papagianopoulos. Petitioners were deprived of nothing at this sale, as title to the property had already been passed to the state.

On April 17, 1974, Respondent filed an action against Petitioners for unlawful detainer, trespass, and declaratory relief as to entitlement to the land. On November 4, 1974, Respondent filed a motion for partial summary judgment to establish his right to title and possession of the property. This motion was heard, granted and filed on December 4, 1974.

Appeal from the partial summary judgment was heard by the Court of Appeal of the State of California, Third Appellate District, and the judgment was reaffirmed. Petition for hearing to the California Supreme Court was denied.

Petitioners exhausted all appeals available to them in California, and made no application to any appellate court for further stay. Thus, the stay of execution, which was granted after the summary judgment, was vacated, and Petitioners were evicted from the premises.

The result of these actions was that property which had produced no property tax payments for eleven years did produce, at the sale, part of those arrear-

ages. Further, the property has now been effectively restored to the property tax roles.

DISCUSSION OF QUESTIONS ALLEGEDLY PRESENTED

A. Procedural due process:

Petitioners received various notices for eleven years that their property had been and would be sold for nonpayment of taxes. They admit having actual notice of the final public sale wherein Respondent Papagianopoulos purchased the property. (See Respondent's Appendix A hereto with relevant excerpts of Petitioners' depositions. See also Petitioners' Appendix A attached to Petition, p. iv, footnote 1.)

Petitioners seem to complain that due process was denied in that the California statutory scheme for giving of notices was allegedly not followed. This argument has been considered by three California courts and correctly found to be without merit. The California statutory property tax sale procedure was followed; furthermore, it exceeds the constitutional requirements of due process. *McMaster v. City of Santa Rosa* (1972) 27 C.A.3d 598, 103 Cal.Rptr. 749. The statutes and policies involving tax sales are complex and this issue alone would generate copious briefs.

Petitioners also complain they were denied due process in that they had no notice or opportunity to be heard because Mrs. Walton's name was not on the envelope in which the notice of sale by the state was

mailed. This complaint is unfounded. Although her name may not have been on the envelope, she discussed the notices with her husband and knew what they stated. It is common knowledge that nonpayment of property taxes may subject the property to sale. The fact they relied on their attorney's faulty advice and failed to take the proper action does not raise the issue of due process. Furthermore, there are no facts which indicate the Petitioners had any basis for contesting the taxes due from them.

Petitioners' statement that John Walton was at the tax sale to find out who would buy the property north of his is incredible. (Petitioners' Brief, p. 11.) This explanation for his presence is presented here for the first time.

Petitioners finally complain they reasonably relied on an alleged oral assurance in 1961 by Chauncey LaRue, Sacramento County Tax Collector at that time, that he would "hold up any action against the Waltons." (Petition, p. 8.) Petitioners allege they relied solely on this statement in remaining on the property for eleven years without paying taxes, while ignoring numerous demands for payment of taxes and notices of sale, and took no action other than the filing of a lis pendens which was ineffective. The fact they employed an attorney to file the lis pendens shows they were not, in fact, relying at all on Chauncey LaRue's statement, and the fact the lis pendens was ineffective is not Respondent's responsibility. This claim was correctly found as a matter of law to be insufficient.

B. Sex discrimination:

Petitioner Rachel Walton claims to have been denied equal protection because her name was allegedly not on the notices of sale. This is not the proper case to determine that issue. The first and strongest reason is that Rachel Walton has no standing, not having been injured by the alleged discrimination because she did get notice. Her deposition makes it clear she knew the taxes were not being paid, that the notices of intended sale were received, that she was involved in sending the notices to their attorney, and that she knew of the intended sale. (See Respondent's Appendix A with relevant excerpts of her deposition, and Petitioners' Appendix A attached to Petition, p. vii, footnote 4.)

The second reason for declining to hear this case is that the issue of sex discrimination is raised for the first time on appeal. (See Petitioners' Appendix A, p. vii, footnote 4.) This claim is factually unsupported since there is nothing in the record to indicate that the alleged lack of Rachel Walton's name was based on sex discrimination. The true facts are that the County sends the notice to the first of the co-owners' names on the deed. Had Rachel Walton's name been first, she would have received the notice, not John Walton.

Finally, the question is now moot, as Respondent Papagianopoulos has title to the property and there is no evidence or allegation that he was in any way involved with the alleged discrimination.

C. Equitable estoppel and fraud:

These claims raise no Constitutional issues here. They have been determined on the basis of state law and found to be spurious. Petitioners' only complaint at the motion for summary judgment was that more time should have been given so they could take Respondent's deposition. Respondent was at the time on an extended visit to Greece. Petitioners made no offer to pay his travel expenses nor to pay the expense of taking his deposition in Greece. There is no reason to suppose that this deposition would be useful. Respondent was simply a bona fide purchaser at a tax sale. He could not have been involved in any misrepresentation or fraud. Nothing would justify estoppel as to him.

ISSUES ON APPEAL

Appendix B hereto is the index page from Petitioners' opening brief in the Court of Appeal of California. Obviously, the issues raised in the petition for certiorari were not raised on appeal.

The real issues actually raised here are, in national perspective, unworthy of the attention of the Supreme Court of the United States. There is no need to add additional procedural safeguards to protect property owners from the results of their willfully failing to pay property taxes. Those who fail to pay property taxes should have the burden of diligent action. Tax sales are already so complex that, as the present facts indicate, the property is usually sold

for less than market value (indeed, often less than the taxes due). There is no rational need for the Court to encourage litigation such as the present case. Such litigation will only further reduce the price at tax sales, and further burden the states in their attempts to secure badly needed tax revenues.

CONCLUSION

Petitioners took a chance on faulty advice from their attorney and lost. Their complaint, if any, is against said attorney, not against the purchaser of the property. A spurious action was properly, efficiently and economically disposed of according to the laws of California. No federal questions are present, and this Writ should be denied.

Respectfully submitted,

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January 4, 1978.

(Appendices Follow)

Appendices

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Superior Court of the State of California
for the County of Sacramento

No. 246594

Louis J. Papagianopoulos,
Plaintiff,
vs.
John Walton, Jr., et al.,
Defendants.

John Walton, Jr., and Rachel Walton,
Cross-Complainants,
vs.
Louis J. Papagianopoulos, et al.,
Cross-Defendants.

[Nov. 4, 1974]

DECLARATION IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON FIRST, THIRD AND FIFTH CAUSES OF ACTION ON PLAINTIFF'S COMPLAINT, AND MOTION FOR SUMMARY JUDGMENT AGAINST CROSS-COMPLAINANTS ON THEIR CROSS-COMPLAINT

I, Alvin R. Wohl, declare as follows:

1. That I am the attorney for the Plaintiff herein and Cross-Defendant.

2. That the deposition of Rachel Walton, one of the Defendants and Cross-Complainants herein was taken on July 23, 1974, in my office at 901 H Street, Ste. 503, Sacramento, CA.

3. In said deposition, the Defendant and Cross-Complainant, Rachel Walton, testified beginning on Page 4, line 10 as follows:

"Q Mrs. Walton, where do you presently reside?

"A 3915 Mayhew Road.

"Q And how long have you resided there?

"A Sixteen or seventeen years, I'm not sure.

"Q Is that the same property that is involved in this case?

"A Yes, sir."

4. Again, on Page 6 of said deposition, beginning at line 15, Rachel Walton testified as follows:

"Q Do you know what certified mail means?

"A You bet.

"Q Have you ever mailed anything certified?

"A Yes, many times.

"Q You, yourself, as an office employee?

"A Yes.

"Q And do you know the procedure that you use in the preparation of certified mail?

"A Yes."

5. Again, on Page 7 of said deposition, beginning at Line 2, Rachel Walton testified as follows:

"Q And do you understand the purpose of mailing matters in the mail certified?

"A Yes, sir.

"Q And what is that?

"A Well, that's to know that it reached the person."

6. On Page 9, beginning at Line 12 of Rachel Walton's deposition, she testifies as follows:

"Q Mrs. Walton, I'll show you Plaintiff's Exhibit 1 for identification attached to the—I should say the receipt of certain documents dated June 8, 1972, June 9, 1973 and October 6, 1973. Do you recall receiving any documents from the County Assessor's Office or Collector's Office, or about those dates?

"A Being employed I would not have been at home. This would have had to have been on a Saturday.

"Q Is that your signature on the June 9, '73 receipt?

"A Yes.

"Q Do you recognize the signature of your husband on the other two receipts?

"A Yes. At this time I was confined at Mercy San Juan Hospital on——

"Q On June 9, 1973, that apparently was at your home on a weekend?

"A Apparently so, or else I was ill that day, which is unlikely. I'm not often off."

7. Continuing on Page 10 beginning with Line 1, Mrs. Walton further testified:

"Q Had you been home on the other occasions would you have been the one who signed the receipts normally?

"A My husband possibly wasn't at home, because he always signs everything. I don't.

"Q Do you recall on the June 9, 1973, when you signed that receipt, do you recall what you received on that date?

"A I do not recall, only from what you have there.

"Q Well, did you open the envelope?"

"A I do not recall that.

"Q Do you know that your taxes were delinquent after you received that particular document?

"A Sure.

"Q What?

"A Sure."

8. On Page 13, beginning at Line 14, Mrs. Walton testified as follows through Page 15, Line 24:

"Q You received another notice on June 9, '73; is that correct?

"A I signed for one on June 9, 1973.

"Q And your testimony today is that you, yourself, never opened that envelope or was present when it was opened by anyone; is that your testimony?

"A I was present when my husband and I opened the envelope together.

"Q Oh, you were. All right. And do you recall what the contents of the envelope contained?

"A No, other than the tax problem.

"Q Did you discuss it at all with Mr. Walton?

"A Certainly, we hoped to goodness we could get this thing settled so we could pay these taxes.

"Q Was it evident that it was another notice of intended tax sale?

"A It was evident that we were to be—that's the law. We get a tax bill every year.

"Q I'm talking about this particular notice, Mrs. Walton, and I don't want to put words in your mouth. If this is not what you recall, I'm merely attempting to refresh your recollection. At the time you and your husband opened the envelope on or about that day, or thereafter I should say, do you recall what the contents of the envelope contained?

"A I do not. It was either a notice of the—no, that wouldn't—a tax bill wouldn't come certified, would it? No.

"Q I don't believe so.

"A Well, then, that would have been a notice that—of a possible tax sale.

"Q Did you discuss it with your husband?

"A Yes.

"Q Do you recall what your discussion was?

"A And that would have been—we had an attorney engaged——

"Q But do you recall discussing with your husband——

"A And we turned it over to this attorney.

"Q On or about or shortly thereafter——

"A Yes.

"Q ——June 9, 1973?

"A Uh-huh (affirmative.)

"Q But you and your husband, now, discussed it before you talked to an attorney, did you not?

"A Well, we discussed that we were to turn everything over to the attorney that came.

"Q Mrs. Walton, I'm trying to determine what you and your husband talked about right after you became aware of the contents of that June 9, '73 letter.

"A Certainly, and the attorney was notified immediately.

"Q What did you and your husband talk about with respect to that notice, do you recall?

"A We——

"Q What was said?

"A We referred it to our attorney.

"Q Well, didn't you talk about it at all before you referred it to your attorney, you and your husband?

"A Well, sure, you comment.

"Q What did you comment about, Mrs. Walton?

"A That probably eminent domain was, I'm sure, in effect there, and that it would be settled so these taxes would be taken out and paid.

"Q So you knew at that time, then, that the taxes were delinquent, and this was a notice of intended sale——

"A Right.

"Q ——did you not?

"A That's right.

"Q You actually had actual knowledge of that intended tax sale?

"A Yes, that is right, and we were not getting any results from the state."

9. Mrs. Walton further testified beginning on Page 16 at Line 19 through Page 17, Line 11 as follows:

"Q (By Mr. Wohl) I have identified it as the June 9, '73 receipt, and I started out by her signing it. Do you recall that?

"A Yes, sir.

"Q Are you confused about these notices? I thought you were clear about them. Do you recall receiving it?

"A Yes.

"Q You recall signing for it?

"A Yes.

"Q You recall your husband opening the envelope?

"A Both of us.

"Q Do you recall discussing it?

"A Yes.

"Q And you recall it was a notice of intended tax sale?

"A Right.

"Q In fact, you knew the State was going to sell the property or the County was going to sell the property to the State——

"A Yes.

"Q ——because of the delinquent taxes? You had personal knowledge of that on that day?

"A That is right."

10. That the deposition of John Walton, Jr., was taken on July 23, 1974 in my office at 901 H Street, Ste. 503, Sacramento, CA.

11. In said deposition, Mr. Walton testified as follows on Page 4, beginning on Line 10:

"Q Mr. Walton, where do you reside?

"A 3915 Mayhew Road.

"Q And how long have you resided there?

"A 1958, February, 1958.

"Q Is that when you acquired the property?

"A That is right.

"Q Is that the same property that's the subject of this lawsuit?

"A It is."

12. And, again, on Page 20, Mr. Walton testified as follows beginning at Line 10 through Page 21:

"Q Now, you knew that it is going to be sold to the State for tax delinquency, didn't you, before it was sold?

"A How long?

"Q Well, any time before it was sold.

"A I knew the day they issued me a letter, I believe it was the 6th.

"Q Of when?

"A In October of 1973, and that's the letter I sent over to my attorney, and he read it, and he says, 'Well, there's nothing to worry about, John,' and my attorney at that time was Mr. Laurence Walton.

"Q Is this the letter you received for the notice that's dated October 5th, that's Plaintiff's Exhibit 2?

"A Well, it is something similar, but I don't believe that it's quite right, and I think we've got that on file somewhere, and——

"Q Is it different? You say—what's different?

"A It just don't sound like it was.

"Q But it was a notice similar to that?

"A Yes.

"Q And the land was going to be sold, and you had until October 30th. That was October 6th you received it?

"A Well, I suppose.

"Q You signed for that?

"A Yes. Okay. Now, I take this letter over to this attorney that I had, Laurence Walton, and he reads this. He says, 'Well, there's no problem, John. We'll put on a lis pendens on there, and they can't sell that piece of land until we have this litigation from the State, because

the State's give you an eminent domain, and that supersedes that, lis pendens supersedes the sale, or any condemnation suit.' Now, that is the words he told me. Now, if that wasn't the case he told me wrong, and if it wasn't the case I could have had the money down there and redeemed my property.

"Q Did you have a loan?

"A No, I've got sources that I could have redeemed it, and I could have bid in my property if I had known, and I could have bought my property back at the time of the tax sale.

"Q Do you know how much your taxes were at the time?

"A I really don't know.

"Q So you knew that the State was going to sell it, and you are saying today that you relied on your advice of counsel?

"A Right.

"Q And that's the reason you didn't redeem it?

"A (Witness nods head affirmatively.)

"Q You had notice of sale?

"A Yes, yes, I had a notice of the sale right here, but that's. . . ."

13. The deposition of H. B. Alvord, Treasurer-Tax Collector of the County of Sacramento, was taken on July 23, 1974, in my office at 901 H Street, Ste. 503, Sacramento, CA.

14. In Mr. Alvord's deposition on Page 9 beginning at Line 9 through Page 10, Line 4, Mr. Alvord testified that the sale of said property by this county was duly published in the Sacramento Union. See

Plaintiff's Exhibit 3 and 4 for identification attached to the deposition of Mr. Alvord.

15. The subject property herein was sold to the Plaintiff, Louis J. Papagianopoulos, and a tax deed vesting ownership in him on October 30, 1973 is attached hereto as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct. Executed on ....., 1974 at Sacramento, California.

ALVIN R. WOHL
Attorney for Plaintiff and
Cross-Defendant

Appendix B

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